January 12, 2001

Sent via e-mail and either hand delivery
or U.S. Mail

Mary L. Cottrell, Secretary
Massachusetts Department of Telecommunications and Energy
One South Station, 2nd Floor
Boston, MA 02110

re: DTE 98-57 Phase I - Verizon's M.D.T.E. Tariff No. 17

Dear Secretary Cottrell:

Enclosed for filing is the Initial Brief of the Attorney General submitted in this proceeding, together with a Certificate of Service.

Sincerely,

Karlen J. Reed
Assistant Attorney General
Regulated Industries Division

KJR/kr

cc: Tina Chin, Hearing Officer (w/ 2 enc.)

Service List for DTE 98-57 Phase I (w/enc.)

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Investigation by the Department on its own motion as to)
the propriety of the rates and charges set forth in the)
following tariffs: M.D.T.E. No. 17, filed with the) D.T.E. 98-57 - Phase I
Department on October 5, 2000, by Verizon New England,)
Inc. d/b/a Verizon Massachusetts.)

INITIAL BRIEF OF THE ATTORNEY GENERAL

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INITIAL BRIEF OF THE ATTORNEY GENERAL

I. Introduction and Summary of Argument

Pursuant to the briefing schedules established in this proceeding by the Department of Telecommunications and Energy ("DTE"), the Attorney General submits his Initial Brief in which he addresses three issues: (1) using individual case basis ("ICB") pricing, (2) arranging access to multi-tenant buildings for Verizon technicians on repair calls, and (3) incorporating arbitration provisions into Verizon Tariff M.D.T.E. No. 17 ("Tariff No. 17" or "the Tariff"). The Attorney General has reviewed the revised Tariff No. 17 filed by Verizon New England d/b/a Verizon Massachusetts ("Verizon" or "the Company") on October 5, 2000 with subsequent revisions, together with the testimony submitted by Verizon and AT&T Communications of New England, Inc. ("AT&T"). Based on this review, the Attorney General urges the DTE to:

Eliminate all ICB pricing proposed under the revised Tariff No. 17, including charges for site surveys for space availability, nonrecurring charges for laying down cabling, and charges for unbundled feeder subloop cabling (collectively, "ICB services"),(1) and require Verizon to provide replacement tariff language with set tariffed rates;

Require Verizon, not competitive local exchange carriers ("CLECs"), to arrange access for Verizon's technicians to multi-tenant buildings; and

Incorporate as part of Tariff No. 17 the DTE's arbitrated ruling on the 2:1 reciprocal compensation and audit issues contained in the AT&T Broadband Arbitration Order issued on December 14, 2000 so that all carriers will operate under the same reciprocal compensation rules.(2)

II. Statement of the Case

On October 5, 2000, Verizon consolidated its proposed revisions to its M.D.T.E. Tariff No. 17 to address issues raised by participants based on previous Verizon tariff filings.(3) On October 17, 2000, the DTE issued a procedural schedule for review of the tariff revisions, and several parties, including the Attorney General, issued discovery on the tariff revisions. The Department conducted evidentiary hearings at its Boston offices on December 14 and 15, 2000, during which Verizon and AT&T sponsored witnesses.(4)

III. Argument

A. The DTE Should Reject ICB Pricing and Should Require Tariffed Rates

The Attorney General urges the DTE to reject Verizon's requests for ICB pricing in the Tariff No. 17 revisions. Instead, the DTE should require Verizon to submit another compliance filing for the ICB services and include the price of each service, the costs associated with providing the service, and detailed cost data justifying those costs.(5) The DTE previously rejected Verizon's use of ICB pricing in Tariff No. 17:

[W]e do not find it appropriate for Bell Atlantic to have ICB pricing in an interconnection tariff of general applicability. As the FCC clearly stated in the above-cited docket, such pricing denies CLECs advance notice of all costs associated with collocation, thereby creating uncertainty for CLECs. This uncertainty, according to the FCC, may serve as a barrier to entry and increase CLECs' business risks.

D.T.E. 98-57 Order (March 24, 2000) at 201. Charging CLECs for proposed services according to a non-standardized schedule must be avoided whenever possible because it creates an opportunity for disparate treatment among CLECs and Verizon's separate data affiliate.(6) ICB pricing creates unpredictability that may adversely affect the CLECs' business plans and may reduce competition.

Even Verizon's witnesses acknowledged the disadvantages of ICB pricing, testifying that it is in the Company's best interest to have standardized offerings because ICB pricing complicates a Verizon sales representative's task of processing orders for these services.(7) ICB pricing, according to Verizon, also requires the Company representative to track the work throughout an individual job, aggregate the expenses after the work is performed, and then submit the billing.(8) Furthermore, the Federal Communications Commission has not allowed ICB pricing for the total carrier outside plant interconnection cabinet ("TOPIC") or collocation remote terminal equipment enclosure ("CRTEE") offerings which Verizon seeks.(9)

Verizon repeatedly declined to narrow the time span or to identify the number of orders needed to set tariffed rates.(10) Although Verizon did not offer the DTE its own estimates as to the number of orders necessary to create reliable tariffed rates, the DTE should not allow Verizon to use this strategy to support ICB pricing.(11)

Instead, the DTE should direct Verizon to set tariffed rates for the ICB services, including the prices for the services, the costs for supplying the services, and the supporting cost data.

B. Verizon Should Arrange Its Own Access to Multi-Tenant Buildings

During hearings, Verizon proposed that Part B, Section 12.2.1.A.1 of the Tariff regarding arranging access to the end-user's premises be revised to say: "Where permission of the building owner or another party is needed for the TC or Verizon to access house-and-riser cable, obtaining such permission is the responsibility of the TC." [Verizon's proposed addition is italicized; TC refers to the CLEC] Tr. Vol. 2 at pages 295-297. The DTE should reject this proposed tariff revision. It is Verizon, not CLECs, that should be primarily responsible for obtaining access for its own repair technicians to multi-tenant building premises.

Verizon already holds contractual leasehold rights of access to these multi-tenant buildings.(12) Moreover, the inherent difficulties in requiring a CLEC to coordinate schedules with Verizon can delay repairs and compound the tenant consumer's repair complaints.(13) Rather than make the tenant suffer from the inefficiencies of this sort of arrangement, the more reasoned approach is for Verizon to arrange access for its technicians and for the CLECs to arrange access for their technicians. The DTE should reject Verizon's request that CLECs be required to arrange access for Verizon technicians to tenant buildings.

C. The DTE Should Incorporate the Terms of its December 14, 2000 AT&T Broadband Arbitration Order Regarding Mutual Reciprocal Compensation and Audit Requirements into Tariff No. 17

On December 21, 2000, the DTE issued a briefing question asking whether it should incorporate any specific provisions of its arbitration orders into Tariff No. 17 and, if so, what standard of review it should use to incorporate such a provision into Tariff No. 17.

1. Standard of Review

Currently, the DTE has determined that Tariff No. 17 provisions generally will not supersede corresponding arbitrated or negotiated provisions in interconnection agreements. Bell Atlantic's Tariff No. 17, D.T.E. 98-57, Order at 19 (March 24, 2000). In addition, arbitrated provisions in one carrier's interconnection agreement will not supersede corresponding negotiated provisions in other carriers' interconnection agreements. Id. at 18.

The DTE, however, has concluded that specific provisions from various arbitration orders may be useful in Tariff No. 17. Verizon's Tariff No. 17, D.T.E. 98-57 - Phase I, Order at 53 (September 7, 2000).(14) The DTE has also found that broader public policy considerations may weigh in favor of incorporating provisions from arbitration orders into Tariff No. 17 to ensure a comprehensive and reasonable tariff of general applicability. Id.

The Attorney General recommends that the DTE incorporate an arbitration order provision into Tariff No. 17 only after the Department determines that a particular arbitration ruling raises broad public policy considerations that favor general application beyond the specific parties involved in the arbitration.(15) The DTE should ensure that the incorporation of a particular ruling from an arbitration order is consistent with the Tariff No. 17 remaining comprehensive and generally applicable as the DTE intended.

2. Incorporation of Specific Arbitration Provisions

The DTE should incorporate into Tariff No. 17 the terms and conditions for mutual reciprocal compensation and audit requirements set forth in the DTE's December 14, 2000 AT&T Broadband Arbitration Order, pages 19-22. The AT&T Broadband Arbitration Order raises broad public policy considerations because it creates mutual reciprocal compensation rights for terminating local traffic and mutual enforcement of audit rights to verify the nature of the traffic. In addition, including the mutual reciprocal compensation and audit requirements into Tariff No. 17 will further the tariff's purpose as a tariff of general applicability by extending these mutual provisions to all carriers, not just to Verizon and AT&T Broadband.

In the AT&T Broadband Arbitration Order, the DTE examined several issues, including: (1) whether the traffic of both Verizon and AT&T Broadband (formerly MediaOne) in excess of a 2:1 terminating-to-originating ratio should be presumed to be Internet traffic and therefore not subject to reciprocal compensation, as set forth in the DTE's reciprocal compensation order in MCI WorldCom, Inc., DTE 97-116-C, Order (May 26, 1999); and (2) whether AT&T Broadband can audit Verizon's traffic to determine if the traffic is local and subject to reciprocal compensation.(16) The DTE concluded in the AT&T Broadband Arbitration Order that mutual application of the DTE's 2:1 terminating-to-originating ratio and traffic audit requirements were appropriate and should be applied to both Verizon and AT&T.(17)

The DTE, in its AT&T Broadband Arbitration Order, rejected Verizon's assertion that it should be exempt from mutual application of the 2:1 terminating-to-originating ratio. AT&T Broadband Arbitration Order at 21. The DTE extended Verizon's right to audit traffic to AT&T Broadband as a means to "fine-tune the 2:1 ratio to reflect more accurately the true nature of the traffic being exchanged between them." Id. at 22. To assure that all carriers, not just AT&T and Verizon, enjoy the mutual reciprocal compensation arrangements set forth in the DTE's AT&T Broadband Arbitration Order, the DTE should revise Tariff No. 17 to allow all carriers to compensate reciprocal traffic on a 2:1 ratio and to audit a carrier's records should a dispute over the 2:1 ratio arise.

IV. Conclusion

For all of the foregoing reasons, the Attorney General urges the DTE to: (1) reject Verizon's request for individual case basis ("ICB") pricing and require Verizon to set tariffed rates, (2) require Verizon to arrange its own access to multi-tenant buildings, and (3) incorporate into Tariff No. 17 the DTE's mutual reciprocal

compensation and audit provisions of the December 14, 2000 AT&T Broadband Arbitration Order.

Respectfully submitted

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Dated: January 12, 2001

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Department on October 5, 2000, by Verizon New England,)

Inc. d/b/a Verizon Massachusetts.)

_____)

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary of the Department by e-mail and/or by either hand-delivery or U.S. mail.

Dated at Boston this 12th day of January 2001.

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1. See, e.g., Tr. Vol. 1, pages 26, 47-48, 61-62, and 131.

2. Petitions of MediaOne Telecommunications of Massachusetts, Inc. and New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts for arbitration, pursuant to Section 252(b) of the Telecommunications Act of 1996 to establish an interconnection agreement, D.T.E. 99-42/43, Order (December 14, 2000) ("AT&T Broadband Arbitration Order") at 19-22.

3. Verizon has filed several tariff revisions which were the subject of the December 14, 15, 2000 evidentiary hearings, including revisions on the issues of collocation at remote terminal equipment enclosures (CRTEE) (May 17, 2000), adjacent collocation (May 19, 2000), enhanced extended loops (EELs) (May 19, 2000), OC-3 and OC-12 inter office facilities (IOF) intervals (May 19, 2000), collocation costs for site surveys and reports, individual case basis ("ICB") pricing and special construction (May 19, 2000), retention rates for billing and collection service calls (May 19, 2000), dark fiber and lease arrangements for virtual collocation (June 14, 2000), and unbundled feeder subloop (November 2, 2000).

4. Amy Stern, Susan Fox, Bruce Lear and Dinell Clark testified on behalf of Verizon; E. Christopher Nurse, Syed A. Saboor, William D. Salvatore and Frank Lombardi testified on behalf of AT&T.

5. This is exactly what the DTE ordered Verizon, then Bell Atlantic, to do in this

same tariff last year. See D.T.E. 98-57 Order (March 24, 2000) at 202.

6. Verizon's witness stated in hearings that the DTE could detect discriminatory treatment of ICB pricing by tracking ICB pricing data for time-and-materials charges. Tr. Vol. 1, page 132. The Attorney General contends that this is an onerous burden on the DTE and the parties and that enforcing tariffed rates is a much more efficient use of their time and efforts.

7. Tr. Vol. 1, pages 63-64.

8. Id. at 64.

9. Id. at 65.

10. See, e.g., Verizon response to AG-VZ-1-4 (Exh. AG-4); Tr. Vol. 1, pages 62-66.

11. It is interesting to note that Verizon used just four orders to support its prices for converting Special Access services to Enhanced Extended Links ("EELs") (see Verizon's Direct Testimony, Exh. VZ-1 at 45-46; Exh. AG-4).

12. Tr. Vol. 2, pages 304-310.

13. Id.

14. The DTE has not specifically enumerated those provisions, but, presumably, now is allowing the parties to DTE 98-57 an opportunity, in Phase I, to review the DTE's arbitration orders for just those provisions.

15. In its January 8, 2001, response to DTE RR-3, Verizon asked the DTE to allow parties an opportunity to comment on "the effects of incorporating [a specific arbitration order] provision into the tariff for general application and the public policy implications of doing so." The Attorney General recommends that the DTE, as a matter of general procedure, allow comment and, if necessary, discovery and evidentiary proceedings on a proposed incorporation prior to issuing its decision on incorporation.

16. AT&T Broadband Arbitration Order at 17.

17. Id. at 21-22.